

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**June 27, 2002**

**IN RE:**

**GENERIC DOCKET TO ESTABLISH  
UNE PRICES FOR LINE SHARING PER  
FCC 99-355, AND RISER CABLE AND  
TERMINATING WIRE AS ORDERED  
IN TRA DOCKET 98-00123**

**DOCKET NO.  
00-00544**

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**ORDER ON PETITION FOR STAY AND  
REQUESTS FOR RECONSIDERATION AND CLARIFICATION**

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This docket came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on May 21, 2002 for consideration of the following filings: 1) *BellSouth Telecommunications, Inc.'s Petition for Stay of TRA First Initial Order of April 3, 2002* filed by BellSouth Telecommunications, Inc. ("BellSouth") on April 10, 2002; 2) *Dieca Communications, Inc. d/b/a Covad Communications Company's Petition for Clarification* filed by Dieca Communications, Inc. d/b/a Covad Communications Company ("Covad") on April 18, 2002; 3) *United Telephone-Southeast, Inc. and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification* filed by United Telephone-Southeast, Inc. and Sprint Communications Company, L.P. ("Sprint/United") on April 18, 2002; 4) *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the First Initial Order of April 3, 2002* filed by BellSouth on April 18, 2002; 5) *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Motion to Accept Supplemental Petition for Clarification*

and Supplemental Petition for Clarification filed by Sprint/United on April 26, 2002; and 6) BellSouth's Motion to Strike that Portion of Dieca Communications, Inc. d/b/a Covad Communication Company's Opposition to BellSouth Telecommunications, Inc.'s Petition for Stay, Which Constitutes a Second and Untimely Motion for Reconsideration filed by BellSouth on April 26, 2002.

## **I. RELEVANT PROCEDURAL HISTORY**

On April 3, 2002, the Authority issued the *First Initial Order* (hereinafter referred to as the *First Interim Order*)<sup>1</sup> containing decisions rendered during a regularly scheduled Authority Conference held on November 20, 2001. In the *First Interim Order*, the Authority discussed the cost studies filed by BellSouth and Sprint/United and addressed numerous cost methodology and process issues. In certain instances, the Authority ordered BellSouth and Sprint/United to adjust their inputs and/or assumptions and re-file their respective cost studies within thirty (30) days of the entry of the *First Interim Order*. With the exception of certain elements, the Authority did not adopt permanent rates for Unbundled Network Elements ("UNEs") at this Authority Conference.

On April 10, 2002, BellSouth filed its petition for stay. BellSouth requested that the Authority stay that portion of its *First Interim Order* related to Issue No. 20. This issue involved the installation of dual-purpose line cards in the fiber-fed Next Generation Digital Loop Carrier ("NGDLC") equipment in the remote terminal.<sup>2</sup> Numerous filings related to the petition for stay followed. Covad filed a brief in opposition to BellSouth's petition for stay on April 24, 2002. In

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<sup>1</sup> The April 3, 2002 order was titled "*First Initial Order*" as a result of an inadvertent error. The order should have been titled "*First Interim Order*." From this point forward, the April 3, 2002 order shall be referred to as the *First Interim Order*. An erratum correcting this error will be filed simultaneously with this order.

<sup>2</sup> *BellSouth Telecommunications, Inc.'s Petition for Stay of TRA First Initial Order of April 3, 2002*, p. 1 (Jun. 19, 2002) (redacted version).

Covad's opposition, Covad requested that the Authority require BellSouth to provide CLECs with access to BellSouth's remote Digital Subscriber Line Access Multiplexers ("DSLAMs") on a UNE basis.<sup>3</sup> Thereafter, BellSouth filed a motion to strike portions of Covad's brief in opposition claiming that the filing actually constituted an untimely motion for reconsideration.<sup>4</sup> BellSouth filed a reply memorandum in support of its petition for stay on May 1, 2002. Covad filed a response to the motion to strike on May 2, 2002, and BellSouth filed a reply memorandum in support of the motion to strike on May 14, 2002.

Simultaneously with the filings of arguments related to BellSouth's petition for stay, parties filed numerous motions for reconsideration and clarification. On April 18, 2002, Covad filed a petition for clarification of the *First Interim Order* requesting clarification of the proposed nonrecurring rate for element J.4.3: Line Sharing Splitter – Per –Line Activation – Central Office, Issue No. 17. Sprint/United filed a joint petition for reconsideration and clarification on April 18, 2002. Sprint/United requested reconsideration and/or clarification of Issue Nos. 5, 8, 10, 11, 12, 13, 15, 17, 18, 20, and 22. Also on April 18, 2002, BellSouth filed a motion for reconsideration seeking reconsideration of Issue Nos. 6, 11, 12, 15, 18 and 20. On April 26, 2002, Sprint/United filed its motion to accept supplemental petition for clarification and supplemental petition for clarification. Sprint/United sought clarification of the Authority's decision to order Sprint/United to capitalize splitter installation costs at the cost of capital ordered in the Permanent Prices Docket. On April 29, 2002, BellSouth filed its opposition to Covad's petition for clarification. No other counter filings were made.

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<sup>3</sup> *Dieca Communications, Inc. d/b/a Covad Communications Company's Opposition to BellSouth Telecommunications, Inc.'s Petition for Stay*, pp. 5-8 (Apr. 24, 2002).

<sup>4</sup> *BellSouth's Motion to Strike that Portion of Dieca Communications, Inc. d/b/a Covad Communication Company's Opposition to BellSouth Telecommunications, Inc.'s Petition for Stay, Which Constitutes a Second and Untimely Motion for Reconsideration*, pp. 2-3 (Apr. 26, 2002).

At a regularly scheduled Authority Conference on April 30, 2002, the Directors voted to suspend the filing deadlines set out in the *First Interim Order* pending resolution of the petition for stay and requests for reconsideration and clarification. The Directors also voted to grant the requests for reconsideration, but further ordered that the merits of the petition for stay and requests for reconsideration and clarification would be addressed at a later date to be set by notice sent to all parties of record.

During the May 21, 2002 Authority Conference, the Directors deliberated the merits of the above filings. Based on the record and filings, the Directors made the following findings and conclusions.

## **II. BELLSOUTH'S PETITION FOR STAY**

In its petition for stay, BellSouth requests that the Authority stay that portion of the *First Interim Order* addressing Issue No. 20. In the *First Interim Order* the Authority defined Issue No. 20 as: "Should the Authority require ILECs to install, for the CLECs' use, dual purpose line cards in the digital loop carrier system?"<sup>5</sup> In resolving this issue the Directors voted to:

1. Order BellSouth and Sprint/United to install, for the CLECs' use, dual-purpose line cards in the fiber-fed Next Generation DLC equipment in the remote terminal;
2. Order that such installation of line cards should be allowed under nondiscriminatory terms and at just and reasonable rates; and
3. Order BellSouth and Sprint/United to file additional cost studies for such installation of line cards in the fiber-fed Next Generation DLC equipment at the remote terminal within thirty [(30)] days of the entry of the Authority's written order.<sup>6</sup>

### **A. Positions of the Parties**

BellSouth argues that it has not deployed dual purpose line cards in its NGDLC systems anywhere in Tennessee and that its sole use of dual purpose NGDLC line cards in its technology

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<sup>5</sup> *First Interim Order*, p. 42 (Apr. 3, 2002).

<sup>6</sup> *Id.* at 43.

laboratory is for technology evaluation purposes.<sup>7</sup> BellSouth claims there are technical, logistical, and operational issues with all NGDLC dual purpose line card solutions currently available.<sup>8</sup> According to BellSouth, granting the stay “would preclude the inevitable dispute that will arise between the parties when the CLECs actually . . . seek to have BellSouth install such a dual purpose line card in an NGDLC system.”<sup>9</sup> Further, BellSouth argues that it is “irreparably harmed when it faces the risk of sanction or penalty for the failure to do that which it is unable to do.”<sup>10</sup> BellSouth next claims that if it is not able to install dual-purpose line cards in its NGDLC system for CLECs’ use, then filing cost studies related to this issue is a useless exercise.<sup>11</sup>

Covad opposes the petition for stay claiming that BellSouth fails to carry its burden. Covad asserts that BellSouth fails to make a “strong showing” that any appeal it may file is likely to be successful.<sup>12</sup> According to Covad, BellSouth’s claims of technical difficulties are vague and suspicious, BellSouth fails to produce compelling evidence to support its position, and BellSouth provides conclusory arguments.<sup>13</sup> Covad further asserts that BellSouth failed to show irreparable injury.<sup>14</sup> Covad states that “[a]lthough it may be true that BellSouth cannot begin installing NGDLC line cards today, it is absolutely clear based on the SBC example that it could begin doing so in the near future.”<sup>15</sup> Covad claims that “BellSouth is seeking to avoid the

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<sup>7</sup> *BellSouth Telecommunications Inc. ’s Petition for Stay of TRA First Initial Order of April 3, 2002*, p. 31 (Jun. 19, 2002) (redacted version).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Dieca Communications, Inc. d/b/a Covad Communications Company’s Opposition to BellSouth Telecommunications, Inc. ’s Petition for Stay*, p. 3 (Apr. 24, 2002).

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 4-5.

Authority's Order not because it cannot comply, but, rather, because it does not want to comply.”<sup>16</sup>

## B. Conclusions

Authority Rule 1220-1-2-.19(3) sets forth the appropriate standard to apply when disposing of a petition for stay. This rule provides:

In deciding whether to grant a stay, the Authority shall consider and give appropriate weight to:

- (a) the likelihood of the success of the petitioner on appeal;
- (b) the hardship or injury which may be imposed on the petitioner if a stay is not granted;
- (c) the hardship or injury which may be imposed on others if a stay is granted; and
- (d) the public interest.<sup>17</sup>

BellSouth is not likely to succeed on appeal. The issue of line sharing over fiber-fed DLC systems was not specifically discussed in the order issued by the Federal Communication Commission (“FCC”) on line sharing. Instead, the FCC explicitly refrained from limiting line sharing to any particular technology and sought only to prevent significant degradation of the analog voice channel.<sup>18</sup>

As to hardship or injury, CLECs will be harmed if an indefinite stay is granted and they are prevented from offering xDSL-based<sup>19</sup> services to Tennessee consumers because BellSouth will not place dual-purpose line cards in the fiber-fed NGDLC equipment. Even though collocation of DSLAMs in the remote terminals offers an alternative to CLECs, this alternative is

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<sup>16</sup> *Id.* at 5.

<sup>17</sup> Tenn. Comp. R. & Regs. 1220-1-2-.19(3) (Rev. Mar. 2002).

<sup>18</sup> *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 F.C.C.R. 20,912, para. 70 (Dec. 9, 1999) (Third Report and Order) (hereinafter *Line Sharing Order*).

<sup>19</sup> xDSL (Digital Subscriber Line) utilizes a portion of the bandwidth of copper loops that is not used for plain old telephone service.

more costly and will not be uniformly available in every remote terminal.<sup>20</sup> CLECs are not harmed, however, at this time because BellSouth has not yet deployed this technology in Tennessee. If BellSouth's experiments are successful, BellSouth should implement this technology in Tennessee. At that time, CLECs will be harmed if they are denied access to BellSouth's NGDLC equipment.

BellSouth is not asserting that installing dual-purpose line cards in the NGDLC equipment is not technically feasible, but that such technology is not compatible with its systems at this time. Thus, monitoring the development of BellSouth's experiments will aid the Authority in its efforts to enhance competition in advanced services in Tennessee and prevent BellSouth from enjoying technology unavailable to CLECs. Based on these findings and conclusions, the Directors voted to grant BellSouth's petition for stay in part. The decisions of the Authority memorialized in the *First Interim Order* as to Issue 20 shall be stayed immediately for a period of six (6) months after which time BellSouth and Sprint/United shall comply with the *First Interim Order* in full.

### **III. BELL SOUTH'S MOTION TO STRIKE**

#### **A. Positions of the Parties**

BellSouth argues that the Authority should strike that portion of Covad's opposition to BellSouth's petition for stay requesting the Authority order BellSouth to provide access to its remote DSLAMs on a UNE basis.<sup>21</sup> BellSouth explains that Covad's request is one for reconsideration and was not filed within the fifteen (15) day time period prescribed by Tenn.

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<sup>20</sup> *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 16 F.C.C.R. 2101, para. 13 (Jan. 19, 2001) (Third Report and Order on Reconsideration) (hereinafter *Line Splitting Order*).

<sup>21</sup> *BellSouth's Motion to Strike that Portion of Dieca Communications, Inc. d/b/a Covad Communication Company's Opposition to BellSouth Telecommunications, Inc.'s Petition for Stay, Which Constitutes a Second and Untimely Motion for Reconsideration*, pp. 1-2 (Apr. 26, 2002).

Code Ann. § 4-5-317(a). BellSouth also asserts that pursuant to Authority Rule 1220-1-1.11 the Authority lacks discretion to expand the time within which a party may seek reconsideration when such time is established by statute.<sup>22</sup>

In its opposition to BellSouth's petition for stay, Covad states:

BellSouth currently delivers DSL service to its own fiber-fed customers through line cards installed in more than 8000 remote DSLAMs. It is technically possible for BellSouth to provide this technology on a UNE basis immediately, and Covad respectfully requests that the Authority modify its order to require this and thereby deliver the benefits of meaningful broadband competition to Tennessee consumers.<sup>23</sup>

In its opposition to BellSouth's motion to strike, Covad asserts that the request contained in its opposition to BellSouth's petition for stay is relevant to the discussion of whether BellSouth must comply with the Authority's *First Interim Order* because the solution posed by the request is an alternative that would accomplish the purpose of the *First Interim Order*.<sup>24</sup>

#### **B. Conclusions**

Contrary to BellSouth's assertion, Covad did not raise an issue for reconsideration, but instead, raised an issue not previously addressed by the Authority. The issue, however, should not be examined absent a hearing involving all interested parties. Covad had an opportunity to raise this issue at an appropriate time before and during the hearing held by the Authority. Moreover, Covad could still raise this issue either in later phases of this proceeding or in another proceeding. For the foregoing reasons, the Directors voted to deny BellSouth's motion to strike Covad's request to order BellSouth to provide CLECs access to BellSouth's remote DSLAMs on a UNE basis and to deny Covad the requested relief at this time.

<sup>22</sup> *Id.* at 2-3.

<sup>23</sup> Dieca Communications, Inc. d/b/a Covad Communications Company's Opposition to BellSouth Telecommunications, Inc.'s Petition for Stay, p. 5 (Apr. 24, 2002).

<sup>24</sup> Dieca Communications, Inc. d/b/a Covad Communications Company's Opposition to BellSouth Telecommunications, Inc.'s Motion to Strike, p. 3 (May 2, 2002).



#### IV. ISSUES FOR CLARIFICATION

- A. **Issue No. 5 - Work times and work groups: (a) What are the appropriate and reasonable tasks and task times for provisioning an xDSL loop? and (b) Should the following BellSouth intermediary work groups be eliminated: Address and Facility Inventory Group, Circuit Provisioning Group, Complex Resale Service Group, Outside Plant Engineering, Local Carrier Service Center, Unbundled Network Element Center, Service Advocacy Center, Work Management Center?**

In the *First Interim Order*, the Directors found that “the record reveals that the work times proposed by Sprint/United for splitter engineering and installation tasks are inflated” and cited Sprint/United’s August 18, 2000 cost study.<sup>25</sup> The Directors also voted to “[o]rder BellSouth and Sprint/United to provide supporting documentation for any work time that is not listed in Exhibit 1 or that is not supported by documentation by a date to be determined by the Pre-Hearing Officer.”<sup>26</sup>

In its motion for reconsideration and clarification, Sprint/United states: “Sprint has reviewed the TRA’s statement that its ‘splitter engineering and installation’ cost is inflated and seeks clarification thereof. The page in Sprint’s cost study the Order cites to is for cable racking and not ‘splitter engineering and installation.’”<sup>27</sup> Furthermore, Sprint/United requested clarification regarding which Sprint/United work times the Authority believes to be estimated and where the calculation of figures is not adequately specified.<sup>28</sup>

The record supports the Authority’s finding that Sprint/United used inflated work times in its cost study. The Directors recognized, however, the need to clarify the order and, therefore, voted to explain that footnote 41 in the Order was provided as an example of some inflated work

<sup>25</sup> *First Interim Order*, p. 16 & n.41 (Apr. 3, 2002).

<sup>26</sup> *Id.* at 18.

<sup>27</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 7 (Apr. 18, 2002).

<sup>28</sup> *Id.*

times and refers to engineering and installation hours proposed for Cross-Connect Cabling, Splitter Cable Racking Investment instead of splitter engineering and installation.

Furthermore, the Directors voted to clarify that Sprint/United must provide supporting documentation for all work times not supported by documentation or for which the calculation of proposed work times was not adequately specified. Additionally, the Directors voted that Sprint/United should consult with Authority Staff concerning the specific work times that need attention.

**B. Issue No. 11 - Splitters and cross-connects: (a) Where should ILEC-owned splitters be collocated in the Central Office? (b) What should be the rate of cross connects for ILEC-owned splitters? and (c) What process should ILECs use to provision ILEC-owned splitters?**

In the *First Interim Order*, the Directors addressed this issue in part and voted to “[o]rder Sprint/United to mount the splitter adjacent to Sprint/United’s MDF if it is technically feasible as envisioned by the FCC when Sprint/United offers ILEC-owned/maintained splitters.”<sup>29</sup> Sprint/United states that any Sprint/United owned line splitters it provides for CLEC’s use will be placed in the same common areas that Sprint/United places CLEC owned line splitters as well as Sprint/United’s own line splitters for its retail customers.<sup>30</sup> Sprint/United asks the Authority to clarify that the *First Interim Order* does not require Sprint/United “to place or price its ILEC owned/maintained line splitters anymore ‘adjacent’ to its MDF than BellSouth or what Sprint has already established for itself or CLEC owned splitters.”<sup>31</sup>

Based on this request, the Directors voted to clarify that the Authority in the *First Interim Order* approved the average cable length of ninety-five (95) feet proposed by Sprint/United.

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<sup>29</sup> *First Interim Order*, p. 28 (Apr. 3, 2002).

<sup>30</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, pp. 5-6 (Apr. 18, 2002).

<sup>31</sup> *Id.* at 6.

Nevertheless, both Sprint/United and BellSouth shall reduce that distance and shall place the splitters adjacent to the MDF as envisioned by the FCC where technically feasible.

**C. Issue No. 12 - What should be the monthly recurring charge for the functionality of ILEC-owned splitters?**

In the *First Interim Order*, the Directors voted to “[o]rder BellSouth and Sprint/United to offer CLECs three alternatives for the monthly recurring costs: (a) ILEC-owned splitter without the bantam [test jack]; (b) ILEC-owned splitter with the bantam [test jack]; and (c) Mechanized Loop Testing.”<sup>32</sup> In its motion for reconsideration and clarification, Sprint/United claims that it does not currently use bantam test jacks itself or offer them to CLECs. Therefore, Sprint/United seeks clarification of whether it must provide bantam test jacks. Additionally, by mechanized loop testing, Sprint/United assumes the Authority to mean mechanized wideband testing. Sprint/United claims that it does not currently have mechanized wideband testing available for itself or others and, therefore, Sprint/United claims its provisioning of this testing is not technically feasible.<sup>33</sup>

During the Conference, the Directors found that the *First Interim Order* clearly stated the holding of the Directors with regard to bantam test jacks. The Directors recognized, however, that clarification of the explanation of Mechanized Loop Testing was needed. Therefore, the Directors voted that, according to the testimony during the hearing, Mechanized Loop Testing is an automated loop testing and trouble isolation system based within the switch.<sup>34</sup>

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<sup>32</sup> *First Interim Order*, p. 30 (Apr. 3, 2002).

<sup>33</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 6 (Apr. 18, 2002).

<sup>34</sup> See Transcript of Proceedings, Nov. 27, 2000, v. I-A, p. 65 (Hearing – Redirect Examination of Michael Zulevic).

**D. Issue No. 13 - What should be the nonrecurring charge for the functionality of ILEC-owned/maintained splitters?**

In the *First Interim Order*, the Authority found that for the “CLEC-owned splitter options, the nonrecurring charges proposed by Sprint/United for cross connects and jumpers associated with splitter installation will be reduced by the work time adjustments adopted herein.”<sup>35</sup> The Directors voted, therefore, to order Sprint/United “to adjust their splitter nonrecurring rates to reflect the Authority’s directives to provision splitters a port-at-a-time and a shelf-at-a-time.”<sup>36</sup> Sprint/United seeks clarification as “it sees no place in the Order where any work time reductions are specified for Sprint.”<sup>37</sup>

The Directors found that clarification is necessary. Sprint/United was ordered to provide supporting documentation for unsupported work times in its cost studies. Proposed work times were approved in the interim pending further orders of the Authority.<sup>38</sup> In its cost study, Sprint/United did not include ILEC-owned/maintained splitters. Because ILECs were ordered to provide ILEC-owned/maintained splitters to CLECs and to provision splitters a port-at-a-time and a shelf-at-a-time, Sprint/United was ordered to adjust its splitter nonrecurring rates to reflect the Authority’s directives. Thus, the Directors voted to clarify that work time adjustments ordered for this issue are those required to provide ILEC-owned/maintained splitters a port-at-a-time and a shelf-at-a-time.

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<sup>35</sup> *First Interim Order*, p. 30 (Apr. 3, 2002).

<sup>36</sup> *Id.*

<sup>37</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 7 (Apr. 18, 2002).

<sup>38</sup> *First Interim Order*, p. 18 (Apr. 3, 2002).

**E. Issue No. 17 - What cost and investment assumptions should be considered when ILECs upgrade their Operational Support Systems ("OSS") for line sharing?**

In the *First Interim Order*, the Authority voted "to approve the assumptions and adopt the rate proposed by Sprint/United for OSS recovery for line sharing."<sup>39</sup> The Directors also voted as to BellSouth "to adopt the monthly recurring rate of \$0.61 for Element J.4.3: Line Sharing Splitter – per Line Activation – Central Office as a permanent rate for BellSouth in Tennessee."<sup>40</sup>

Despite the Authority's decision approving Sprint/United's cost study and method of recovery for line sharing related to Operation Support Systems ("OSS") upgrades, Sprint/United advises that it has "indefinitely placed on hold the line share programming upgrade to its OSS due to minimal line sharing demand." Sprint/United states that it "has not charged CLECs the monthly OSS cost recovery charge and will not begin until it actually incurs OSS upgrade costs."<sup>41</sup>

Covad claims that the *First Interim Order* should be clarified to the extent that it did not contain a nonrecurring rate for element J.4.3: Line Sharing Splitter – Per Line Activation – Central Office. Covad proposes a permanent rate of \$18.18 to replace the \$39.39 proposed by BellSouth. To support its proposed rate, Covad relies on pre-filed testimony and a table comparing BellSouth's proposed rate for Element J.4.3. with rates ordered or proposed in other states.<sup>42</sup> BellSouth opposes Covad's position claiming Covad's attempt to have the Authority establish a permanent non-recurring rate for Element J.4.3 based on Covad's presentation of information outside the record of this proceeding is improper.<sup>43</sup> Further BellSouth claims that the

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<sup>39</sup> *Id.* at 39.

<sup>40</sup> *Id.*

<sup>41</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 9 (Apr. 18, 2002).

<sup>42</sup> *Dieca Communications, Inc. d/b/a Covad Communications Company's Petition for Clarification*, pp. 1-2 (Apr. 18, 2002).

<sup>43</sup> *BellSouth's Opposition to Covad's Petition for Clarification*, pp. 1-2 (Apr. 29, 2002).

information presented in Covad's petition regarding the rates for Element J.4.3 in North Carolina and Georgia is incomplete and incorrect.<sup>44</sup> BellSouth argues also that the Authority should adopt permanent rates based on BellSouth's initial cost studies for Element J.4.3 because the Authority did not order BellSouth to make any modifications to its cost studies related to this element.<sup>45</sup>

In the *First Interim Order*, the Authority found that Sprint/United's OSS cost study was based on the cost of identified modifications to the OSS, projected demand provided by various CLECs, and a five-year recovery life.<sup>46</sup> The Authority further found that Sprint/United's proposed assumptions and rates were reasonable and approved them. In the *Line Sharing Order*, the FCC recognized that ILECs' "OSSs already support the xDSL-based services currently offered by incumbent LECs,"<sup>47</sup> and concluded that "the interim arrangements that the incumbents use for themselves can be extended to competitive carriers as well."<sup>48</sup>

The Directors found that whenever CLECs request OSS functionality for the provision of the line sharing UNE, Sprint/United must accommodate such requests without delay. Nevertheless, the Authority is not aware of any CLEC complaints against Sprint/United for failing to provision OSS functionality for the line sharing UNE. It is expected that modifications to the OSS to provide unbundled access to the high frequency portion of the loop can be made in a relatively short time period.<sup>49</sup> Additionally, Sprint/United has not incurred costs for OSS modifications for line sharing. Based on these considerations, the Directors voted to order Sprint/United to set its charge for OSS recovery to \$0, but at such time that Sprint/United begins to incur OSS modification charges, the rates approved in the *First Interim Order* shall apply.

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<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 2.

<sup>46</sup> *First Interim Order*, p. 38 (Apr. 3, 2002).

<sup>47</sup> *Line Sharing Order*, 14 F.C.C.R. 20912, at para. 97.

<sup>48</sup> *Id.* at para. 100.

<sup>49</sup> *Id.* at paras. 96-101.

As to Covad's request that the Authority adopt Covad's proposed nonrecurring rate for Element J.4.3, the Authority will establish permanent rates for all elements not specifically addressed in the *First Interim Order* after the filing of the revised cost studies. Issues related to work times may impact the permanent nonrecurring rate for Element J.4.3. Based on the foregoing, the Directors found that Covad's petition lacks merit and voted to deny the petition.

V. ISSUES FOR RECONSIDERATION

- A. **Issue No. 6 – Loops capable of provisioning xDSL services: (a) What types of loops should the Authority require ILECs to make available to CLECs for the provisioning of xDSL services? and (b) Should the Authority require ILECs to mark loops qualified and ordered by CLECs in order to prevent those copper loops from being rolled to fiber?**

In the *First Interim Order*, the Authority found that “[t]here is no reason to justify why the cost of a 2-wire copper loop in the Permanent Prices Docket should differ from the cost of a 2-wire UCL short or long in this docket; especially if the same cost methodology was applied in both proceedings.”<sup>50</sup> Based on that finding, the Directors ordered that the “recurring and nonrecurring costs for a 2-wire and a 4-wire UCL, short or long, be set equal to the recurring and nonrecurring cost of a 2-wire analog voice grade loop (SL1) and a 4-wire analog voice grade loop established in the Permanent Prices Docket.”<sup>51</sup> In addition, the Authority ordered BellSouth to provide “non-designed” loops to CLECs and to submit additional cost studies for loop design that BellSouth performs at the request of a CLEC.<sup>52</sup>

BellSouth asserts that the Authority's conclusions regarding the non-designed SL1 and the designed UCL long and short loops are erroneous and should be reconsidered. BellSouth maintains that the SL1 offering is a non-designed loop that can be provided on either copper or

<sup>50</sup> *First Interim Order*, p. 21 (April 3, 2002).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 22.

fiber and is intended to support plain old telephone service ("POTS") and is not guaranteed to support DSL services.<sup>53</sup> Further, BellSouth alleges: 1) "a UCL has to have a test port added, and has to be designed, attributes that an SL1 does not require"; 2) "[e]quating an SL1 that has no load coils or bridged tap to the designed UCL is simply erroneous"; and (3) equating SL1s and UCLs "simply deprives BellSouth of the opportunity to recover its costs, as it is allowed to do by law."<sup>54</sup>

The Directors found that the evidentiary record supports the Authority's decisions on this issue and that modification of those decisions is unwarranted. Therefore, the Directors voted that the *First Interim Order* shall stand as issued.

**B. Issue No. 8 - Should the Authority order ILECs to make line splitting available in Tennessee?**

In the *First Interim Order*, the Authority found that based on the nondiscriminatory provisions of the Telecommunications Act of 1996 and Tennessee statutes, ILECs should provide ILEC-owned and maintained splitters for the line sharing and line splitting UNEs. Therefore, the Directors unanimously ordered ILECs in Tennessee to offer ILEC-owned and maintained splitters to requesting CLECs.<sup>55</sup>

Sprint/United argues that the Authority's decision requiring ILECs to provide CLECs with line splitters is based upon substantial legal errors. Sprint/United states that the FCC did not mandate that ILECs provide CLECs line splitters and that the FCC has not found that line splitters are a UNE.<sup>56</sup> Sprint/United asserts that "[i]n order for the TRA to impose the

<sup>53</sup> *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002*, p. 8 (Apr. 18, 2002).

<sup>54</sup> *Id.*

<sup>55</sup> *First Interim Order*, pp. 24-25 (Apr. 3, 2002).

<sup>56</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 2 (Apr. 18, 2002).



requirement on ILECs to provide CLECs with line splitters, then it must find line splitters to be an unbundled network element after conducting a necessary and impair analysis.”<sup>57</sup> Sprint/United claims that the necessary and impair analysis can not be satisfied “[s]ince a CLEC can install its own line splitter in an ILEC’s common area or collocate its own line splitter . . . just as easily as an ILEC can.”<sup>58</sup> Further, Sprint/United states that Tenn. Code Ann. § 65-4-124(a) is preempted by federal law and argues that reliance on 47 C.F.R. §51.311(a) is “misplaced given the rule assumes line splitters are network elements, which they are not.”<sup>59</sup>

The Authority may require Sprint/United to offer splitters independent of the unbundling obligation cited by Sprint/United. Although the FCC has yet to address the issue of splitter ownership, the FCC considered a splitter as a necessary element without which the line sharing UNE could not be offered.<sup>60</sup> During the Conference, the Directors found that the evidentiary record supports the Authority’s decisions on this issue and that modification of those decisions is unwarranted. Therefore, the Directors voted that the *First Interim Order* shall stand as issued.

**C. Issue No. 10 – What splitter ownership options should ILECs be required to offer in Tennessee?**

In the *First Interim Order*, the Authority ordered Sprint/United to modify its splitter cost methodology to “capitalize installation costs at the cost of capital ordered in the Permanent Prices Docket and recover them through monthly recurring rates over a fixed period of time.”<sup>61</sup> In its motion to accept supplemental petition and supplemental petition for clarification, Sprint/United questions the Authority’s decision to order Sprint/United to capitalize splitter

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<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 4.

<sup>60</sup> *Line Splitting Order*, 16 F.C.C.R. 2101 at para. 136.

<sup>61</sup> *First Interim Order*, pp. 25-26 (Apr. 3, 2002).

installation costs at the cost of capital ordered in the Permanent Prices Docket. Sprint/United states:

[T]he Permanent Prices docket established numerous costs, rates and charges for BellSouth. Evidence regarding costs, rates and charges for United were not in that proceeding nor were such matters established for United. United believes the TRA intended for the cost study for splitter installation for United to be consistent with other approved cost studies United has filed in this proceeding, reflecting United's own cost of capital. United asks the TRA to clarify that it is appropriate for United's cost studies for the splitter installation costs to use the TRA approved United cost of capital.<sup>62</sup>

The Authority did not address the rates of elements applicable to Sprint/United in the Permanent Prices Docket; however, in the Universal Service Docket, the Authority ordered Sprint/United to use an overall cost of capital of 10.15%.<sup>63</sup> This is the most recent "TRA approved cost of capital" for Sprint/United. Based on the foregoing, the Authority granted Sprint/United's motion to accept supplemental petition and supplemental petition for clarification. The Directors ordered that the *First Interim Order* should be modified such that Sprint/United shall capitalize splitter installation costs at the cost of capital approved by the Authority for Sprint/United in the Universal Service Docket.

- D. Issue No. 11 - Splitters and cross-connects: (a) Where should ILEC-owned splitters be collocated in the Central Office? (b) What should be the rate of cross connects for ILEC-owned splitters? and (c) What process should ILECs use to provision ILEC-owned splitters?**

In the *First Interim Order*, the Authority ordered BellSouth and Sprint/United to "modify their splitter cost methodology so that, for ILEC-owned/maintained splitter[s], they provide

<sup>62</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Motion to Accept Supplemental Petition for Clarification and Supplemental Petition for Clarification*, p. 2 (Apr. 26, 2002).

<sup>63</sup> *In re: Universal Service Proceeding*, Docket No. 97-00888, *Interim Order on Phase II of Universal Service*, p. 51 (Sept. 16, 1999).

splitter functionality on an individual 'port-at-a-time' or on a 'shelf-at-a-time' basis, at the option of the CLEC."<sup>64</sup>

BellSouth requests that the Authority reconsider its decision and allow BellSouth to provide splitters to CLECs in minimum increments of 24 splitters. BellSouth claims that it "purchases splitters, which it does not use for its own services and has to obtain solely for the benefit of CLECs, in units that provide capacity to split either 96 or 144 loops."<sup>65</sup> According to BellSouth, the Authority's decision requires BellSouth to "assume risks related to cost recovery that are simply inappropriate."<sup>66</sup> BellSouth states that it is willing to assume the risk of selling splitters in increments of twenty-four, but not one at a time.<sup>67</sup>

Sprint/United asserts that "shelf-at-a-time provisioning is the least cost, most efficient way of deploying line splitters and therefore most in conformance with TELRIC<sup>68</sup> standards."<sup>69</sup> According to Sprint/United, this is the method it uses to provision its own line splitters. Sprint/United argues that its cost studies may demonstrate that a port-at-a time provisioning is not economically feasible and render the issue moot.<sup>70</sup> Sprint/United also asserts that the "substantial network inefficiencies created by port-at-a-time provisioning outweigh any benefits offered to competitive LECs in terms of marketing flexibility."<sup>71</sup>

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<sup>64</sup> *First Interim Order*, p. 28 (Apr. 3, 2002).

<sup>65</sup> *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002*, p. 4 (Apr. 18, 2002).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 5.

<sup>68</sup> TELRIC is an acronym for Total Elemental Long Run Incremental Cost, a costing methodology.

<sup>69</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 4 (Apr. 18, 2002) (footnote 68 added).

<sup>70</sup> *Id.* at 5.

<sup>71</sup> *Id.*

During the Conference, the Directors found that the evidentiary record supports the Authority's decision on this issue and that modification of the decision is unwarranted. Therefore, the Directors voted that the *First Interim Order* shall stand as issued.

**E. Issue No. 12 - What should be the monthly recurring charge for the functionality of ILEC-owned splitters?**

In the *First Interim Order*, the Authority ordered BellSouth and Sprint/United to "offer CLECs three alternatives for the monthly recurring costs: (a) ILEC-owned splitter without the bantam [test jack]; (b) ILEC-owned splitter with the bantam [test jack]; and (c) Mechanized Loop Testing."<sup>72</sup> BellSouth argues that providing CLECs with the option of purchasing splitters with or without bantam test jacks, would require BellSouth to modify their inventory control systems to allow for the additional manual processes that would be necessary.<sup>73</sup> BellSouth noted that "CLECs have complained incessantly about the errors that manual processes have supposedly interjected into other BellSouth/CLEC operations."<sup>74</sup> BellSouth also comments that it did not consider any of the modification costs in the cost studies and, if included, "may have a significant impact on the cost of splitters purchased by the CLECs."<sup>75</sup> In conclusion, BellSouth asks the Authority to require one alternative or the other, but not both.<sup>76</sup>

During the Conference, the Directors found that the evidentiary record supports the Authority's decisions on this issue and that modification of those decisions is unwarranted. Therefore, the Directors voted that the *First Interim Order* shall stand as issued.

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<sup>72</sup> *First Interim Order*, p. 30 (Apr. 3, 2002).

<sup>73</sup> *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002*, pp. 6-7 (Apr. 18, 2002).

<sup>74</sup> *Id.* at 7.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

**F. Issue No. 15 - What is the appropriate time interval for ILECs to provide the line sharing UNE to CLECs?**

In the *First Interim Order*, the Authority relied on the provisioning intervals contained in BellSouth's response to the Authority's data request of August 6, 2001 and the interconnection agreement between BellSouth and Covad that BellSouth attached to its cost study<sup>77</sup> and voted to:

1. Order that for 1-5 lines at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **no conditioning is necessary** should be 3 business days from the receipt of a CLEC's Local Service Request ("LSR");
2. Order that for 1-5 lines at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **conditioning is necessary** should be 5 business days from the receipt of a CLEC's LSR;
3. Order that for 6-14 lines at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **no conditioning is necessary** should be 5 business days from the receipt of a CLEC's LSR;
4. Order that for 6-14 lines at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **conditioning is necessary** should be 10 business days from the receipt of a CLEC's LSR; and
5. Order that the parties should negotiate an appropriate provisioning interval for orders of more than 14 lines per order or per end-user location, whether conditioning is necessary or not.<sup>78</sup>

BellSouth alleges that the determination of the appropriate provisioning intervals for line sharing under various circumstances was not part of this docket. It argues that "in this proceeding, the Authority has no record upon which to base any factual finding regarding the appropriate intervals for the provisioning of line sharing."<sup>79</sup> BellSouth further alleges that the information contained in BellSouth's response to the data request upon which the Authority

<sup>77</sup> *BellSouth Telecommunications, Inc.'s Notice of Filing*, Attachment 4: Amendment to the Interconnection Agreement Between Dieca Communications, Inc. d/b/a Covad Communications Company and BellSouth Telecommunications, Inc., Section 2.11 (Jun. 30, 2000).

<sup>78</sup> *First Interim Order*, p. 36 (Apr. 3, 2002).

<sup>79</sup> *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002*, p. 10 (Apr. 18, 2002).

relied does not support the Authority's conclusions. BellSouth explains that the response related only to loops that did not require loop conditioning and, therefore, should not be applied to loops which require conditioning.<sup>80</sup> In conclusion, BellSouth requests that the Authority reconsider its decision and defer the issue to another more appropriate docket.<sup>81</sup>

Sprint/United contends that CLECs should not enjoy preferential treatment as compared to Sprint/United's retail customers, but that the Authority should pursue parity in wholesale and retail provisioning as required by the FCC's rules.<sup>82</sup> Sprint/United asserts that the Authority imposed BellSouth's standard on Sprint/United despite Sprint/United's representation that it has an internal goal of provisioning the high frequency UNE in five (5) and ten (10) days, without and with conditioning, respectively.<sup>83</sup> Sprint/United notes that it has "stepped up its internal goal and actual provisioning of the high frequency portion of the loop to three (3) days when no conditioning is required, regardless of the order being wholesale or retail."<sup>84</sup>

Provisioning intervals are necessary to determine whether loops are provided at parity. If parity between ILECs and CLECs is not maintained, discrimination by ILECs could preclude a meaningful opportunity to compete. The FCC states that "[b]ecause there are currently no state-required provisioning intervals for the high frequency portion of the loop network element, we urge states to consider a standard based on the time required to provision xDSL capable loops."<sup>85</sup> However, the FCC also asserts that "states are free to adopt more accurate provisioning standards for the high frequency portion of the loops."<sup>86</sup>

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<sup>80</sup> *Id.* at 11.

<sup>81</sup> *Id.*

<sup>82</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 8 (Apr. 18, 2002).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Line Sharing Order*, 14 F.C.C.R. 20912 at para. 174.

<sup>86</sup> *Id.* at para. 175.

BellSouth and the Data Coalition<sup>87</sup> agreed that loops without loop conditioning should be made available to CLECs within three (3) business days.<sup>88</sup> Where the parties disagree is the provisioning intervals when loop conditioning is necessary. In this case, the Data Coalition proposed five (5) business days while BellSouth offered no alternatives.<sup>89</sup> Sprint/United states that it provisions loops requiring conditioning within ten (10) days.<sup>90</sup> BellSouth has provided no evidence for longer intervals, except to argue that the Authority based its decision on a misinterpretation of BellSouth's information. The Authority finds that BellSouth, a larger telecommunications company with a more sophisticated network, should have the ability to meet the same timeframes as Sprint/United. Additionally, the FCC noted that the "Texas Commission requires that the incumbent LEC provision 95 percent of xDSL orders within 3 business days (for 1-10 loops), 7 business days (11-20 loops) and 10 business days (20+ loops)."<sup>91</sup>

There is, however, an error in the *First Interim Order*. The *First Interim Order* should have included provisioning intervals for 6-10 lines rather than 6-14 lines.

Considering this information, the Authority finds that provisioning intervals that fall between the low intervals proposed by the Data Coalition, intervals proposed by BellSouth, and intervals contained in FCC orders are appropriate. Therefore, the Directors voted to modify the *First Interim Order* as follows:

1. For **1-5 lines** at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **no conditioning is necessary**, should be **3 business days** from the receipt of a CLEC's Local Service Request (LSR);

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<sup>87</sup> The Data Coalition includes BlueStar Networks, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, Broadslate Networks of Tennessee, Inc., and Vectris Telecom, Inc.

<sup>88</sup> *Post-Hearing Brief of the Data Coalition*, p. 36 (Jan. 23, 2001); *BellSouth Telecommunications, Inc.'s Notice of Filing*, Attachment 4: Amendment to the Interconnection Agreement Between Dieca Communications, Inc. d/b/a Covad Communications Company and BellSouth Telecommunications, Inc., Section 2.11 (Jun. 30, 2000).

<sup>89</sup> *Post-Hearing Brief of the Data Coalition*, pp. 34-35 (Jan. 23, 2001).

<sup>90</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 8 (Apr. 18, 2002).

<sup>91</sup> *Line Sharing Order* at para. 175.

2. For **6-10 lines** at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **no conditioning is necessary**, should be **5 business days** from the receipt of a CLEC's LSR;

3. For **1-10 lines** at the same end-user address, the provisioning and installation interval for the high frequency portion of the loop UNE, where **conditioning is necessary**, should be **10 business days** from the receipt of a CLEC's LSR; and

4. The parties should negotiate an appropriate provisioning interval for orders of **more than 10 lines** per order or per end-user location, whether conditioning is necessary or not.

**G. Issue No. 18 - Loop Makeup ("LMU") information: (a) What access should CLECs have to ILECs' LMU information? and (b) What rate, if any, should CLECs pay when they place a manual local service request, if there is no electronic ordering interface available?**

In the *First Interim Order*, the Authority voted to:

1. Order that CLECs are entitled to both electronic and manual LMU;
2. Order Sprint/United to replace estimated times by actual times that its employees spend performing loop qualification tasks;
3. Order Sprint/United to offer two separate charges for loop qualification, one for manual and one for electronic LMU information;

....  
5. Order BellSouth to charge CLECs requesting LMU \$0.76 as an interim rate for both electronic and manual LMU information until BellSouth makes a showing that electronic access to LMU is available to all CLECs in Tennessee and the Authority establishes permanent rates for manual and electronic access to LMU information . . . .<sup>92</sup>

Sprint/United states that it does not have electronic LMU capabilities either for itself or for CLECs and that the requirement that ILECs provide both manual and electronic LMU is at present technically infeasible.<sup>93</sup> In addition, Sprint/United professes that even though the *First Interim Order* requires Sprint/United to replace estimated times its employees spend providing LMU information with actual times, its cost study in fact contained actual times, not estimated times.<sup>94</sup>

<sup>92</sup> *First Interim Order*, p. 41 (Apr. 3, 2002).

<sup>93</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 9 (Apr. 18, 2002).

<sup>94</sup> *Id.*



According to BellSouth, the Authority decision to order BellSouth to charge CLECs requesting LMU \$0.76 as an interim rate is inconsistent with the FCC's orders.<sup>95</sup> BellSouth argues that the FCC made it clear that BellSouth is not obligated to do more for CLECs than it does for itself.<sup>96</sup> BellSouth attached an affidavit of Ronald Pate showing that electronic access to LMU information is available to CLECs and that from February 2001 through January 2002, in Tennessee, BellSouth processed 3721 electronic requests for LMU information while only processing 61 manual requests for LMU information.<sup>97</sup> BellSouth claims that "there was ample evidence in the record as to the cost of providing LMU information manually, and the Authority should adopt that evidence and provide separate electronic and manual LMU rates."<sup>98</sup>

Sprint/United's testimony on the issue of whether it has LMU capabilities was contradictory. Daniel R. Gordon testified on behalf of Sprint/United that compared to BellSouth's proposed costs, "[f]or an automated service order, Sprint/United's time and costs are reduced even more."<sup>99</sup> Further, he stated that "[u]ntil Sprint has a fully automated loop qualification system that will permit CLEC access, Sprint assumes that some CLECs will submit requests for loop qualification via fax, while others will submit them electronically."<sup>100</sup> Further, in its August 18, 2000 filing, Sprint/United claimed:

It is anticipated that not all orders will be submitted through our automated system. Therefore, steps and time estimates for both manual and automated methods were identified. . . . A single cost for the two methods was calculated by applying the probability of occurrence for each of these two methods.<sup>101</sup>

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<sup>95</sup> *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002*, pp. 12-13 (Apr. 18, 2002).

<sup>96</sup> *Id.* at 13 (citing *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C.R. 3696, para. 429 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking)).

<sup>97</sup> *Id.* at affidavit of Ronald M. Pate, para. 8 (Apr. 18, 2002).

<sup>98</sup> *Id.* at 14.

<sup>99</sup> Daniel R. Gordon, Pre-Filed Rebuttal Testimony, p. 9 (Nov. 20, 2000).

<sup>100</sup> *Id.* at 10.

<sup>101</sup> *Line Sharing Cost Study United Telephone-Southeast, Inc.*, p. 4 (Aug. 18, 2000) (filed as proprietary).

This testimony supports a finding that Sprint/United does have electronic LMU capabilities for CLECs.

The FCC clearly mandated that ILECs provide nondiscriminatory access to LMU information.<sup>102</sup> The FCC also required ILECs to provide LMU information within the same timeframe they make the information available to themselves.<sup>103</sup> Because Sprint/United does not use electronic access to LMU information for itself, there is no discrimination against CLECs. Although Sprint/United does make a showing that the technology is not currently available, it has not established that it is not technically feasible for Sprint/United to provide electronic access to LMU information at present.

Based on Sprint/United's claims that it lacks the ability to offer electronic access to LMU information at present and that it does not utilize electronic LMU, the Directors voted to set the charge for electronic access to LMU information to \$0. The Directors also voted that at such time that Sprint/United begins to incur upgrade costs to offer electronic access to LMU information that the cost methodology approved in the *First Interim Order* shall apply. As to Sprint/United's second contention, the Authority based its decision to order Sprint/United to replace estimated times with actual times on Sprint/United's representation that its cost study contained estimated times. Given Sprint/United's clarification of this issue, the Directors voted to modify the *First Interim Order* such that Sprint/United is not required at this time, to change the times used for the calculation of nonrecurring charges for loop qualification.

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<sup>102</sup> *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C.R. 3696, para. 427 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking) (hereinafter *UNE Remand Order*).

<sup>103</sup> *Id.* at para. 431.

As to BellSouth's contentions, the Directors found that the evidentiary record supports the Authority's decisions and that modification of those decisions is unwarranted. Therefore, the Directors voted that the *First Interim Order* shall stand as issued.

**H. Issue No. 20 - Should the Authority require ILECs to install, for the CLECs' use, dual-purpose line cards in the digital loop carrier system?**

In the *First Interim Order*, the Directors unanimously voted to order BellSouth and Sprint/United to install, for the CLECs' use, dual-purpose line cards in the fiber-fed Next Generation DLC equipment in the remote terminal under nondiscriminatory terms and at just and reasonable rates.<sup>104</sup>

BellSouth states that the Authority should reconsider this decision claiming that it is not able at this time to provide the NGDLC dual-purpose line card as ordered by the Authority. BellSouth also contends that the Authority cannot compel it to provide that functionality to CLECs.<sup>105</sup> Sprint/United also asserts that it lacks the ability to comply with the Authority's order. It states that it "is testing several vendors' dual-purpose line cards, but has not released any single card for standard deployment and does not foresee a date certain when this will occur."<sup>106</sup> Sprint/United further asserts that issues related to the dual-purpose line cards "were addressed minimally or not at all during the evidentiary phase of the present proceeding," and argues that "transferring the issue to the TRA's Advanced Technologies docket<sup>107</sup> to further resolve these issues and pending further experience with the technology is warranted."<sup>108</sup>

<sup>104</sup> *First Interim Order*, p. 43 (Apr. 3, 2002).

<sup>105</sup> *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002*, pp. 11-12 (Apr. 18, 2002); *BellSouth Telecommunications Inc.'s Petition for Stay of TRA First Initial Order of April 3, 2002*, p. 31 (Jun. 19, 2002) (redacted version).

<sup>106</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, p. 10 (Apr. 18, 2002).

<sup>107</sup> *See In re: Generic Docket to Consider Technology Advances*, Docket No. 02-00434.

<sup>108</sup> *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification*, pp. 10-11 (Apr. 18, 2002).

Based on their decision to grant in part the petition for stay, the Directors found that this issue is moot and, therefore, did not address the merits of the parties' claims.

**I. Issue No. 22 - What process should the Authority adopt to enable CLECs to access Unbundled Network Terminating Wire (UNTW) and riser cable or Unbundled Intrabuilding Network Cable (UINC)?**

In the *First Interim Order*, the Authority ordered Sprint/United to file a cost study consistent with the Authority's decisions on this issue, including CLECs' access to its inside wire subloop, within 30 days of the entry of the Authority's written order.<sup>109</sup> According to Sprint/United, the "continuing problem Sprint encounters is that it has no experience with unbundling the inside wire sub-loop and nothing to draw on as far as past inside wire non-recurring expenses."<sup>110</sup> Therefore, Sprint/United asks the Authority to reconsider its decision to require Sprint/United to complete cost studies.<sup>111</sup>

During the Conference, the Directors found that the evidentiary record supports the Authority's decision and that modification of that decision is unwarranted. Therefore, the Directors voted that the *First Interim Order* shall stand as issued.

**IT IS THEREFORE ORDERED THAT:**

1. *BellSouth Telecommunications, Inc.'s Petition for Stay of TRA First Interim Order of April 3, 2002* is granted in part. The decisions of the Authority memorialized in the *First Interim Order* as to Issue 20 shall be stayed immediately for a period of six (6) months after which time BellSouth Telecommunications, Inc., United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. shall comply with the *First Interim Order* in full.

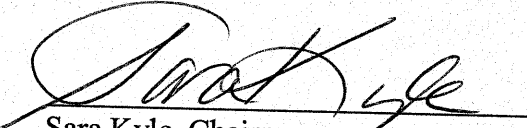
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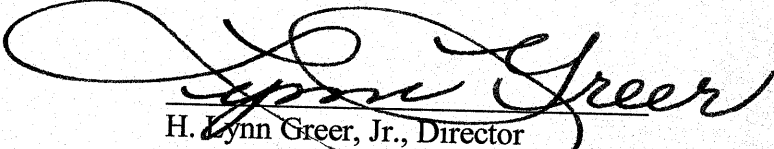
<sup>109</sup> *First Interim Order*, p. 46 (Apr. 3, 2002).

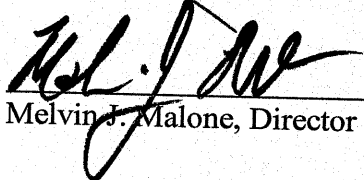
<sup>110</sup> *Id.* at 11.

<sup>111</sup> *Id.*

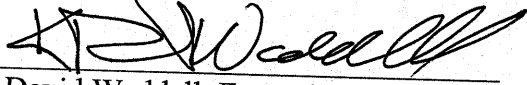
2. *United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Motion to Accept Supplemental Petition for Clarification* is granted
3. *Dieca Communications, Inc. d/b/a Covad Communications Company's Petition for Clarification, United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Joint Petition for Reconsideration and Clarification, BellSouth Telecommunications, Inc.'s Motion for Reconsideration of the TRA First Initial Order of April 3, 2002, and United Telephone-Southeast, Inc., and Sprint Communications Company, L.P. Supplemental Petition for Clarification* are disposed of as provided for herein.
4. *BellSouth's Motion to Strike that Portion of Dieca Communications, Inc. d/b/a Covad Communication Company's Opposition to BellSouth Telecommunications, Inc.'s Petition for Stay, Which Constitutes a Second and Untimely Motion for Reconsideration* is denied.
5. BellSouth Telecommunications, Inc. and United Telephone-Southeast, Inc. and Sprint Communications Company, L.P. shall file cost studies as described in the *First Interim Order* as modified herein by **June 4, 2002**.
6. The proposed procedures requested in the *First Interim Order* under Issue No. 22 shall be filed by **June 1, 2002**.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary